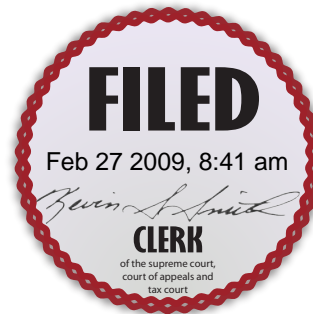


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

ANDREW DETRO,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 29A05-0810-CR-570
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE HAMILTON SUPERIOR COURT
The Honorable Daniel J. Pfleging, Judge
Cause No. 29D02-0401-FA-3

February 27, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Andrew Detro was convicted of child molesting¹ as a Class B felony and was sentenced to fifteen years with nine years suspended to be served on probation. Detro appeals the revocation of his probation and raises the following issue: whether sufficient evidence was presented to establish that he violated his probation.

We affirm.

FACTS AND PROCEDURAL HISTORY

In January 2006, Detro pleaded guilty to one count of child molesting as a Class B felony. He was sentenced to fifteen years in the Department of Correction with six years executed. The remaining nine years were suspended and to be served on probation. Various conditions were placed upon the probationary sentence, including the following:

You shall . . . submit to a . . . sex offender assessment/evaluation by a treatment facility approved by your Probation Officer. You will satisfactorily comply with the recommendations set forth in the assessment. You are responsible for the cost of the assessment as well as any other fees associated with the successful completion of the program requirements, and you are responsible for providing written verification of compliance when requested by your Probation Officer.

Appellant's App. at 95.

Detro began serving his probation in June 2007 and started his sex offender treatment at Broad Ripple Counseling Center on June 27, 2007. At that time, he completed a psychosexual client intake form, a client treatment schedule, and a treatment contract. As part of his psychosexual treatment plan, Detro agreed as conditions of his treatment that he would not have any pornographic material in his possession at any time and that he would

¹ See Ind. Code § 35-42-4-3.

“only engage in healthy sexual activities with someone with whom [he was] in a committed relationship, who is age appropriate, and consents to the activity.” *State’s Ex. 2; Appellant’s App.* at 225.

From the time of Detro’s initial psychosexual evaluation until March 2008, Detro had five sexual partners. One of these was his brother’s estranged wife, one of them was his girlfriend, and the others were friends. During this same time period, Detro used a webcam to engage in “Internet sex” with his girlfriend at the time. He also visited a pornographic website, which visit he claimed was unintentional and that he exited as soon as the content became evident. *Tr.* at 22. At some point, his girlfriend performed oral sex with him in the restroom at his place of employment. When Detro revealed this sexual encounter at work to his therapy group in January 2008, his therapist added the following two additional conditions of his treatment: (1) that Detro have no romantic relationships or dating; and (2) that he have no internet access, including email. *State’s Ex. 4* at 14. Sometime thereafter, Detro admitted to the therapy group that he had used the internet to search for employment. At that time, his therapist recommended that an allegation of probation violation be filed against Detro.

On March 6, 2008, the State filed an information of violation of probation alleging that Detro failed to comply with his treatment recommendations. *Appellant’s App.* at 114. After Detro filed a request for a more definite statement, the State filed a response that specifically claimed that Detro “failed to successfully complete his counseling due to his use of pornography, viewing and/or sending pornography at his place of employment, and having

sexual activity with multiple partners, among other things.” *Id.* at 123. After an evidentiary hearing, the trial court found that Detro had violated his probation by accessing the internet, by transmitting the “Internet sex” video to another via the internet, and failing to complete a full sexual history assignment, which it found showed a failure to comply with his treatment. *Tr.* at 62. The trial court then ordered Detro to serve four years of his previously suspended sentence, with two years in the Department of Correction and two years on work release. The remaining balance of Detro’s original sentence was to be served on probation. Detro now appeals.

DISCUSSION AND DECISION

A defendant is not entitled to probation, but rather such placement is a matter of grace and a conditional liberty which is a favor, not a right. *Jones v. State*, 838 N.E.2d 1146, 1148 (Ind. Ct. App. 2005). A probation revocation hearing is in the nature of a civil proceeding, and therefore, an alleged violation of probation only has to be proven by a preponderance of the evidence. *Whatley v. State*, 847 N.E.2d 1007, 1010 (Ind. Ct. App. 2006) (citing *Marsh v. State*, 818 N.E.2d 143, 148 (Ind. Ct. App. 2004)). We review a trial court’s decision to revoke probation and its sentencing decision in a probation revocation proceeding for an abuse of discretion. *Abernathy v. State*, 852 N.E.2d 1016, 1020 (Ind. Ct. App. 2006). An abuse of discretion occurs when the trial court’s decision is against the logic and effect of the facts and circumstances before the court. *Id.* When reviewing a trial court’s determination that a probation violation has occurred, we neither reweigh the evidence nor reassess the credibility of the witnesses. *Whatley*, 847 N.E.2d at 1010. Rather, we look to the evidence

most favorable to the probation court's judgment and determine whether substantial evidence of probative value supporting revocation existed. *Id.*

Detro argues that the trial court abused its discretion when it revoked his probation because insufficient evidence was presented to support a violation. He specifically contends that the terms of his treatment were not sufficiently defined to allow him to understand what conduct would result in a violation of his probation. Detro alleges that no definitions of the terms "pornographic material" or "healthy sexual activities" were given, and therefore, he was not aware that he was violating the conditions of his treatment when he engaged in the activities deemed to be violations.

A trial court enjoys broad discretion when determining the appropriate conditions of probation. *Foster v. State*, 813 N.E.2d 1236, 1237 (Ind. Ct. App. 2004). This discretion, however, is limited by the principle that the conditions imposed must be reasonably related to the treatment of the defendant and the protection of public safety. *Id.* Additionally, a probationer has a due process right to conditions of probation that are sufficiently clear to inform him of what conduct will result in a violation. *Id.* at 1238.

Here, as part of his probation, the trial court imposed a condition that Detro submit to a sex offender evaluation by a treatment facility and comply with the recommendations set forth in the assessment. As part of these recommendations, Detro was to not have any pornographic material in his possession at any time and to only engage in healthy sexual activities with someone with whom he was in a committed relationship, who was age appropriate, and who consented to the activity. Additionally, later in his treatment, two

further conditions were added to his treatment, which included that he have no romantic relationships and that he have no internet access. At some point after this, Detro admitted to his therapist that he had accessed the internet to search for employment. The therapist then recommended that a violation of probation be filed. At the conclusion of the evidentiary hearing, the trial court found that Detro had violated his probation by failing to comply with his conditions of treatment. The trial court specifically found that Detro did so by accessing the internet, as well as transmitting the “Internet sex” video via the internet, and failing to complete a sexual history assignment for therapy.

Although Detro spends much of his brief arguing that there was insufficient evidence to support his violation of probation because the term “healthy sexual activities” was not defined, we note that the trial court did not find a probation violation based on that condition of his treatment. Instead, the trial court found that Detro had failed to comply with his treatment by violating three other conditions, which included accessing the internet. Detro admitted to his therapist that he had accessed the internet after the condition was added that he could have no internet access. At the evidentiary hearing, Detro testified that he did access the internet in March 2008 after his access had been restricted. “It is well settled that violation of a single condition of probation is sufficient to revoke probation.” *Gosha v. State*, 873 N.E.2d 660, 663 (Ind. Ct. App. 2007). We therefore conclude that the trial court did not

abuse its discretion when it revoked Detro's probation as sufficient evidence supported that he had violated a condition of his probation.²

Affirmed.

BAKER, C.J., and NAJAM, J., concur.

² Detro also argues that the imposition of the additional conditions of treatment constituted a breach of contract because there was no additional consideration given for or manifestation of mutual assent with the additional conditions. As previously stated, probation is a conditional liberty which is a favor and not a right. *Jones v. State*, 838 N.E.2d 1146, 1148 (Ind. Ct. App. 2005). In his order of probation, which was signed by Detro, it states that the conditions may be modified. *Appellant's App.* at 95. Further, at the time that the conditions were added, Detro agreed to abide by the conditions in exchange that a probation violation would not be filed for previous violations that had occurred. *State's Ex. 1*. We do not find Detro's argument to have any merit.